S.B.Civil Second Appeal NO.287/2004

Smt. Laxmi Devi & Ors.

vs

Pukh Raj

DATE OF ORDER : - 11.10.2004

HON'BLE MR. PRAKASH TATIA,J.

Mr. N.K.Rai,for the appellants.

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Heard learned counsel for the appellant.

The appellant is aggrieved against the judgment and decree dated 13th May, 2002by which the trial court passed the decree for eviction against the appellants. The appeal preferred by th appellants was also dismissed by the first appellate court vide judgment and decree dated 18th May, 2004.

Learned counsel for the appellants submitted that the appellants case was seriously prejudiced because of the fact that plaintiff in his plaint categorically stated that defendants-appellants are not tenants and he paid the court fees treating the appellants-defendants as trespassers. However, learned counsel for the appellant further submits that the plaintiff subsequently also paid the court fees by valuing the suit for eviction against

the tenant. According to learned counsel for the appellants, the trial court framed the issue no.4 in a manner which caused serious prejudice to the appellants. Learned counsel for the appellant submits that the consolidated suit, on the basis of the title as well as on the basis of the tenancy was not maintainable.

I perused the facts of the case. The case of the appellants themselves is that they are tenant in occupation, they paid the rent of the premises in dispute upto 14th July, 1995, that too, through court by initiating proceedings under Section 19A of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950. That plea was accepted by the trial court. The trial court found that the appellants-tenants acquired suitable residential accommodation and in fact, they shifted to that residential accommodation. The courts below held that the appellants are not using the premises in dispute since last more than 8 months. These findings of facts were upheld by the first appellate court and a bare perusal of the judgment of the two courts below reveals that the two courts below considered the voluminous documentary evidence also in addition to the oral evidence for recording the finding. In view of the above, the evidence are binding. The contention of learned counsel for the appellants that the issue no.4 was not properly framed and it caused prejudice to the appellant is devoid of any force in view of the fact that the appellants were

fully aware that plaintiff is seeking decree on the ground that the appellants have acquired a suitable residential accommodation, that too, of two storied building. On this issue, the evidence was led by both the parties, oral as well as documentary. Therefore, the appellants were fully aware about the issue involved and it has not caused any prejudice to the appellants at all. The contention of learned counsel for the appellant that the consolidated suit was not maintainable, has not been supported by any of the provisions of law, which bars the suit, particularly when the suit for eviction in the State of Rajasthan is a civil suit and the Act of 1950 only gives additional protection to the tenant, but suit for eviction is a civil suit only and is entertained by Civil Court and not by any tribunal.

In view of the above, I do not find any merit in this appeal and the same is hereby dismissed.

(Prakash Tatia), J.

c.p.goyal/-